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IN THE

Supreme Court of the United States

OCTOBER TERM—1970

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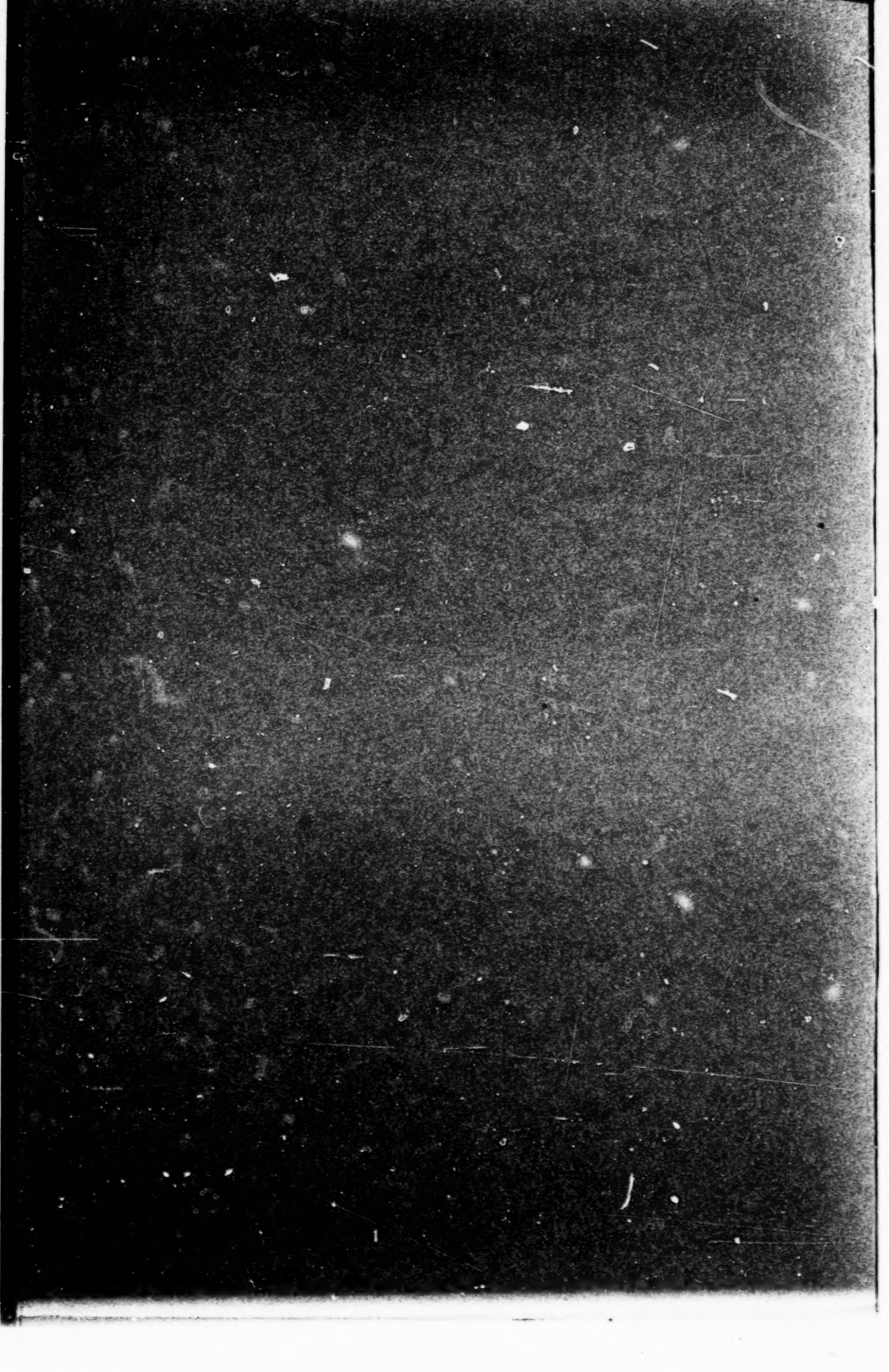
ALUMINUM COMPANY OF AMERICA, ET AL,
Petiltioners,
v.
WOODS EXPLORATION & PRODUCING COMPANY,
ET AL, *Respondents*

On Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF OF WOODS EXPLORATION & PRODUCING COMPANY, ET AL, IN OPPOSITION TO PETITIONERS' WRIT OF CERTIORARI

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BRIEF OF WOODS EXPLORATION & PRODUCING COMPANY, ET AL, IN OPPOSITION TO PETITIONERS' WRIT OF CERTIORARI

OPINIONS BELOW

The opinions of the District Court (Petitioners' Appendix pages 1 and 25) are reported in 284 F.Supp. 582 and 304 F.Supp. 845. The opinion of the Court of Appeals (Petitioners' Appendix 38) is reported in 438 F.2d 1286 (1971).

JURISDICTION

The judgment of the Court of Appeals was entered on the 5th day of January, 1971. Motion for rehearing was overruled on the 17th day of March, 1971. Petition for certorari was filed on the 15th day of May, 1971. The petition was received by counsel for Woods Exploration & Producing Company, Inc., et al, on the 17th day of May, 1971. The jurisdiction of this court is invoked under Title 28 U.S.C. 1254(1).

STATUTES INVOLVED

Title 15, §§1 & 2, commonly referred to as the Sherman Antitrust Law; and § 4, commonly referred to as the Clayton Act and Articles 6049a, 6049e, 6050 of the Revised Statutes, and RR Comm. Rule 30 are set forth in the Appendices of this brief, pages 19-24.

QUESTIONS PRESENTED

1. Whether the filing of false and perjured nomination forecasts with the Texas Railroad Commission pursuant to a conspiracy to monopolize the extraction, production and transportation of gas in the Appling Field for the purpose of reducing Respondents' production allowable are subject to antitrust restrictions.

2. Whether the production, transportation and sale of natural gas constitutes a part of trade or commerce for purposes of the Sherman Act.

3. Whether the Appling Field, covering over 4,000 acres and extending in two counties in Texas, constitutes the relevant geographic market or alternatively,

Whether "the relevant market" consists of the arena within which the strength of competitive forces is meas-

ured, or whether under the facts the relevant area of competition constitutes the part of trade and commerce with regard to which the power to exclude competition must be measured.

STATEMENT

Respondents, Woods Exploration & Producing Company, Stanley Woods, and Southeastern Pipeline Company, instituted this action in the United States District Court for the Southern District of Texas, Houston Division, alleging that Defendants in violation of Sections 1 and 2 of the Sherman Act, 15 U.S.C. and Section 4 of the Clayton Act have entered into a combination and/or conspiracy in restraint of trade or commerce and have monopolized or attempted to monopolize, etc. The acts charged in furtherance of such conspiracy consisted of:

(1) The filing of false nomination forecasts by defendants with the Texas Railroad Commission so as to reduce Plaintiffs' production allowables, and

(2) The thwarting of Plaintiffs' gas production by Defendants' refusal to deal; Defendants' harassment and interference with Plaintiffs' operations in the drilling and production of gas;

(3) The thwarting of the agreement with:

(a) Lumar Gas Corporation to construct a liquid extraction plant;

(b) Graver Oil & Gas Equipment Company and

(c) Marler Construction Company for the erection of a plant with Southeastern Pipeline Company to Southeastern's damage.

The trial court sustained a partial motion for summary judgment eliminating Plaintiffs' cause of action alleging it sustained damages by reason of Petitioners having filed false and perjured nominations before the Railroad Commission, 284 F.Supp. 582. At the end of the trial on the rest of the remaining issues, the court instructed the jury not to consider any damages which Plaintiffs might have suffered from the loss of opportunity to participate in the construction of a liquid extraction plant and the loss of profits from an extraction plant which was contracted to be built for Respondents by Graver or Marler Construction Company, but submitted to the jury other items of damage. The jury returned a verdict for Plaintiffs (R. 3341). On post verdict motion for judgment filed both by Petitioners and Respondents, the court granted Petitioners' motion for judgment notwithstanding veredicto denying relief, 304 F.Supp. 845. The Court of Appeals reversed, 438 F.2d 1286, directing:

1. The District Court to enter judgment for Respondents in the amount found by the jury, reversed the grant of summary judgment, and

2. Remanded for an evidentiary determination as to whether or not Defendants in fact, filed false nominations, and if so, what damages respondents sustained therefrom; and

3. Further ordered the District Court to hold a trial for the purpose of determining if Respondents' allegation with respect to the proposed extraction plant are true, and if so, the extent of damages flowing therefrom.

On hotly contested issues of fact, the jury found Alcoa and Crown monopolized, attempted to monopolize and conspired with F. E. Appling, Carl Seigesmund or Houston Pipeline Company to monopolize an *appreciable part*

of the trade and commerce of drilling, producing and transporting gas from the Appling Field (R. 3327). Predicated on an affirmative answer on such question, the jury found that Alcoa and Crown refused to deal with Stanley Woods, individually, and with Woods Exploration & Producing Company. That as a result of such combination and conspiracy, monopoly or attempt to monopolize, etc., Petitioners acting with F. E. Appling, prevented Fred Wolcott from signing Plaintiffs' exhibit No. 85A (contract providing for the building of a joint pipeline and found damages in the sum of $142,759.00, and that Woods Exploration & Producing Company was damaged in the sum of $500.00.

Petitioners, in their statement of the case (pages 6-13 of their petition for cesrtiorari), overstate their case. By way of example, Petitioners contend that Lavaca Pipeline Company, a wholly owned subsidiary of Petitioner Aluminum Corporation of America, did not purchase nor transport gas in the Appling Field for others than Alcoa, Crown and Pocantico. The uncontraverted evidence is that it sold its gas to Houston Natural Gas, to Monsanto, and also purchased gas from and/or transported gas for other producers in the Appling Field such as Sun Oil (Tr. 2742) from a subsidiary of Phillips Petroleum Company and from Layton-Brown (Tr. 2752-2756). Moreover, under the express provision of Article 6049(a) §8aa, Revised Civil Statutes of Texas, in force at all times material to this case under the undisputed facts of the record, Petitioners' subsidiary Lavaca Pipeline Company was a common purchaser. Article 6049(a) §8aa Vernon Annotated Texas Statutes, it was also a common carrier under Article 6050, Vernon Annotated Texas Statutes. (Appendices A&B, pp 19-20.) Statutes

because its pipeline crossed under and over number of county lines (Tr. 2741-2742), which makes it a gas utility or public utility. Therefore, Petitioners' contention that it had no duty either to purchase or transport Appellants' gas is not supported by either the facts or the applicable statutory provisions. However, the question whether Petitioners' wholly owned subsidiary Lavaca Pipeline Company was or was not either a common carrier or a common purchaser or both, or whether it purchased gas from other producers of gas in the Appling Field is wholly immaterial if in fact, as the jury found, that as a part of their unlawful conspiracy to monopolize and to restrain the production of gas within the Appling Field, it refused to deal with Respondents and prevented Lumar Gas Pipeline Company to enter into an agreement to build a joint pipeline to Respondents' damage.

When Respondent Woods became interested in the Appling Field, he was aware that the Railroad Commission had set the 1/3rd-2/3rd rule in the Appling Field and on that basis, Woods and Woods Exploration & Producing Company and its investors invested considerable sums of money to drill these gas wells, projecting the probable return under the applicable rules existing in that field. In *Railroad Commission v. Aluminum Company of America*, 380 S.W.2d 599 (Tex. 1964), the case cited by Petitioners, the Supreme Court of Texas took cognizance of the fact that the Aluminum Company of America sought and aided in the establishing of this very rule and after it was set in operation it acquiesced in it for a long period of time without complaint. The Texas Supreme Court held that after such length of time, it would be inequitable to require the Commission to overturn the pro-rata formula that has been in effect in this and

other fields for years where operators have drilled and completed wells at great expense in reliance of such formulas and where conditions had become stabilized. *Railroad Commission of Texas v. Aluminum Corporation of America,* supra.

Petitioners ignore the real question which is how much more gas Respondents would have produced under the 1/3rd-2/3rds rule had Petitioners not filed perjured and false nominations. Rule 30 of Texas Railroad Commission (See Appendix C, p. 21). Therefore, if such false and perjured nominations, in fact, caused lower allowables, causing Respondents to produce less gas than they would have been entitled to produce, it would then be entitled to whatever damages the proof may show they suffered as a result thereof.

For a correct factual background, Respondents respectfully refer the Court to the opinion of the Court of Appeals, 438 F.2d, pages 1300-1302.

I.

BY FILING OF FALSE AND UNJUSTIFIABLY LOW FORECASTS IN ORDER TO REDUCE RESPONDENTS' PRODUCTION ALLOWABLES, PETITIONERS SUBVERTED THE RAILROAD COMMISSION'S SCHEME OF SETTING ALLOWABLES ON RESPONDENTS' WELLS.

ARGUMENT AND AUTHORITIES

At this posture, Respondents' allegations that Petitioners have filed false and perjured nominations in order to subvert the Railroad Commission's scheme in setting allowables by filing unjustifiably low forecasts in order to reduce Petitioners' production allowable must be taken as true.

Petitioners seek to defend their action by stating that this was a state action and therefore, not subject to the antitrust laws. In doing so, Petitioners rely on *Eastern Railroad Presidents Conference v. Noerr,* 365 U.S. 127, 81 S.Ct. 523, 5 L.Ed. 464; *Parker v. Brown,* 317 U.S. 341, 63 S.Ct. 307, 87 L.Ed. 315; *Okefenokee Rural Electric Membership Corp. v. Florida Power & Light Co., et al,* 214 F.2d 413 (5th Cir. 1954); and *United Mine Workers v. Pennington,* 381 U.S. 657, 85 S.Ct. 1585 (1965), 14 L.Ed.2d 626. However, because of the facts as pleaded in this case, the same argument was rejected by the Texas Court in *Woods Exploration & Producing Co. v. Aluminum Corp. of America,* 382 S.W.2d 343, writ denied, Supreme Court of Texas, n.r.e., adopting Judge Ingraham's opinion in which he clearly stated that (36 F.R.D. 107) Respondents did not attack the validity of any order of the Texas Railroad Commision but are attacking the conspiracy under the antitrust laws, one of its manifestations being the filing of false nominations.

As the opinion of the Court of Appeals reveals, Respondents here have also filed suit in the State Court, claiming violation of the state antitrust laws. Petitioners here, defendants in the state court case, filed their motion for summary judgment contending as they do here, that this was state action and could therefore not be the basis for an antitrust suit. The Court of Appeals of Texas reversed, 382 S.W.2d 343, 1964. The Texas court in reversing the summary judgment rejecting Petitioners' contentions, stated as follows, stating:

> "Appellees contend by their counterpoint III that nominations or other representations made by them to the Railroad Commission of Texas, whether individually or in concert, for the purpose of influenc-

> ing the governmental action of such commission in fixing gas production allowables, as a matter of law, cannot constitute a violation of the Texas antitrust statutes or form the basis or subject matter of an antitrust damage action."

The case at bar is much stronger and differs substantially from *Trucking Unlimited v. California Motor Transport Company*, 432 Fed.2d 755. In *Trucking*, the district court specifically noted that there were no allegations that defendant's presentations to the governmental agencies and the courts were in themselves false, misleading or lacking in evidentiary or legal support. In the case at bar, however, the complaint charges that petitioners filed false and perjured nominations as part of the jury-found conspiracy.

Moreover, the Texas Statutes establishing the Railroad Commission and its functions specifically provide that the antitrust and/or monopoly statutes of Texas shall not be affected thereby[1] (See Appendix D, p. 22). In any event, this court has held that fraudulent statements to a governmental agency coupled with violations of Section 2 does not exempt one from the application of the antitrust laws. *Walker Process Equipment v. Food Machine & Chemical Corp.*, 382 U.S. 172, 86 S.Ct. 347, 15 L.Ed.2d 247 (1965).

II.

THE RELEVANT MARKET

Petitioners completely ignore this court's admonition that "immunity from antitrust laws is not lightly implied."

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1. Section 19 of Article 6049e, Vernon's Annotated Texas Statutes provide as follows: "Sec. 19—it is especially provided that nothing herein shall in any manner affect, alter, diminish, change, or modify the antitrust and/or monopoly statute of this state. And that no provision of this act shall in any manner directly or indirectly authorize the violation of such antitrust or monopoly statutes, etc."

United States v. First City National Bank of Houston, 386 U.S. 361, 87 S.Ct. 1088, 1099, 18 L.Ed.2d 151, quoting from *California v. Federal Power Commission,* 369 U.S. 482, 485, 82 S.Ct. 901, 8 L.Ed.2d 54. In paying no heed to this court's decisions in *United States v. Pabst Brewing Co.,* 384 U.S. 546, 86 S.Ct. 1665, 16 L.Ed.2d 765 (1966); *United States v. Continental Can Co.,* 378 U.S. 441, 458, 84 S.Ct. 1738, 12 L.Ed.2d 953, 964; and *Klor's, Inc. v. Broadway Hale Stores, Inc.,* 359 U.S. 207, 79 S.Ct. 705, 3 L.Ed.2d 741 (1959), they argue that the Appling Field cannot constitute a relevant market first because of the limited geographic locality and secondly, because it is a source of supply rather than a market.

As so aptly stated by Judge Goldberg, Petitioners' argument fails to recognize that "relevant market" is simply a shorthand phrase used to describe the "arena in which the strength of competitive forces is measured." In *Pabst Brewing* case, supra, this court held (pg. 1668):

> "Congress did not seem to be troubled about the exact spot where competition might be lessened; it simply intended to outlaw mergers which threatened competition in any or all parts of the country. Proof of the section of the country where the anticompetitive effect exists is entirely subsidiary to the crucial question in this and every § 7 case which is whether a merger may substantially lessen competition anywhere in the United States."

Respondents here never contended that Petitioners possess or attempted to possess nationwide monopoly power over the marketing and/or transportation of natural gas. Instead, Respondents contended that Petitioners possessed monopoly power over the extraction and transportation

of gas from the Appling Field. With regard to extraction of gas—which is at the heart of Respondents' complaint, the Appling Field is the relevant area of competition. It is "part of trade and commerce" with regard to which must be measured the power to exclude competitors. In *Denver Petroleum Company v. Shell Oil Company,* 306 F.Supp. 289 (Dist. Court, Colo. 1969), the court in discussing the relevant market held that one county in New Mexico, the Basin-Rio Arriba oil production area, was a relevant market.

Petitioners and their co-conspirators were located and operated in the Appling Field. The most likely source of supply for Southeastern Pipeline Company was the Appling Field. The Appling Field is a separately defined geographic reservoir and so made by statute. The statute makes the market demand for the Appling Field a recognized sub-market. The sole and only possible area of competition between Petitioners and Respondents is the production and transportation of gas from the Appling Field. The area which the Petitioners sought to appropriate for themselves was the Appling Field. Under the facts in this case, the relevant market is the Appling Field. This court in *United States v. Phillipsburg National Bank & Trust Co.,* 399 U.S. 350, 90 S.Ct. 2035 (1970) has held a relevant market to be a much smaller area.

It is respectfully submitted that under *North Texas Producers' Association v. Mezger Dairies, Inc.,* 348 F.2d 189 (C.A. 1965); *Klor's,* supra; *Mandeville Island Farms v. American Crystal Sugar Co.,* 334 U.S. 219, 68 S.Ct. 996, and the cases hereinabove cited there can be no question but that under the facts in this case, the relevant market is the Appling Field.

The Petitioners' complaint seems to be that the jury did not determine that the Defendants controlled prices *or* excluded competition in commerce which is significant with *relevant* impact on interstate trade. But the fact is that the District Court fully instructed the jury on this and by their answer to question 2, passed on these very facts. (See Appendix E, p. 23).

Thus, it is readily seen that the jury in answering "yes" to question 2 found all of the underlying facts of "relevant market."

While Petitioners do not directly challenge that the gas from the Appling Field did not flow in interstate commerce, and hence, was not subject to the antitrust laws, they do so in an oblique fashion. However, the decisions of this court refute such contention even if obliquely made. Entirely aside from the admitted facts that all Petitioners are engaged in interstate commerce, it is now beyond dispute that the production, transportation, and sale of natural gas constitutes a "part of" "trade or commerce" for purposes of the Sherman Act, *United States v. El Paso Natural Gas Company*, 376 U.S. 651, 657, 84 S.Ct. 1044 (1964), 12 L.Ed.2d 12; *United States v. Grinnell Corp., et al*, 384 U.S. 563, 573, 86 S.Ct. 1698, 16 L.Ed. 778 (1966). Not only did Crown and Alcoa[2] do business in states other than in the State of Texas, and were engaged in the production, transportation and sale of gas from the Appling Field, but it is without dispute that their gas comingled with gas being transported through pipelines carrying gas from one state to another and therefore, entered into the flow of interstate commerce. *People of State of California v. Lo-Vaca Gathering Co.*, 379 U.S.

2. In fact, Alcoa is engaged in world-wide operations.

366, 85 S.Ct 486, 13 L.Ed.2d 537 (1965); *Mandeville Island Farms v. American Crystal Sugar Co.*, supra; *Cherokee Laboratories, Inc. v. Rotary Drilling Services, Inc.*, 383 F.2d 97 (5th Cir. 1967), cert. den'd 390 U.S. 904, 88 S.Ct. 816, 9th L.Ed. 870; *City of Fort Lauderdale v. East Coast Asphalt Corp.*, 329 F.2d 871 (5th Cir. 1964); *Hardrives Company, Inc. v. East Coast Asphalt Corp.* (5th Cir. 1964), 329 F.2d 868, holds that even purely local activities may be still violative of the Sherman Act if it substantially affects interstate commerce market either directly or through its interplay with other business activities.

III.

THE APPELLATE COURT PROPERLY REVERSED THE SUMMARY JUDGMENT AND REMANDED FOR AN EVIDENTIARY DETERMINATION

(1) WHETHER OR NOT PETITIONERS FILED FALSE NOMINATIONS AND IF SO, WHAT DAMAGES PLAINTIFFS SUSTAINED THEREFROM, AND

(2) REMANDED FOR TRIAL FOR THE PURPOSE OF DETERMINING IF RESPONDENTS' ALLEGATION WITH RESPECT TO THE PROPOSED EXTRACTION PLANT ARE TRUE AND, IF SO, THE EXTENT OF DAMAGES FLOWING THEREFROM.

Petitioners' able counsel misconceives the holding of the Court of Appeals and without authorities to support its contention charges that the Appellate Court in re-

manding for trial 1 and 2 above, abused the established judicial practice and procedure.

The cases are uniform and it is a well established principle of federal law that where the requirement of a jury trial has been satisfied by a verdict according to law upon any issue of fact, here a violation of Section 2 of the Sherman Act, there is no requirement compelling a new trial on such resolved issues even though another trial on separable issues must be tried again. In the case at bar the separate and distinct issues are those excluded by the trial court (1) if Petitioners filed perjured nominations, and (2) were Respondents prevented by Petititioners to erect an extraction plant. These issues are separate and distinct and their determination not entwined with the jury's answer to question 2. *Gasoline Products Co. v. Champlin Refining Co.*, 283 U.S. 494, 51 S.Ct. 513. Certainly all factual questions with respect to liability have been fully developed, considered and passed on by the jury. *American Locomotive v. Harris*, 239 F. 234 at page 246.

The decision of the Court of Appeals in the case at bar is consistent with justice and respected precedent. In *Noel v. United Aircraft Corp.*, 359 F.2d 671 (5th, 1966), the court remanded the case to the trial court for a reconsideration of the amount of damages which it found to be inadequate. See also: *Turrentine v. American Home Assurance Co.*, 279 F.2d 811 (C.A. 5th, 1960); *Grigsby v. Coastal Marine Service of Texas, Inc.*, 412 F.2d 1011, at p. 1041.

What Petitioners refused to accept is that the jury on contested issues found them in violation of Section 2 of the Sherman Act and this contested fact issue having been decided in favor of Respondents, they were entitled to all

of the damages suffered by them as a proximate cause of Petitioners' jury found illegal acts. The jury in response to question number 5 predicated as it was on an affirmative answer to question number 1 or 2 found that Petitioners, acting together with F. E. Appling, prevented Fred Wolcott from signing Respondents' Exhibit Number 85A. The testimony of the witnesses, Robert L. Topper, Maurice S. Williams, James S. Simmons and Curt Gallagher proved that the parties have agreed to the building of an extraction plant with Lumar Pipeline Company and agreed on all the terms and conditions under which it was to be erected and how the profits were to be distributed; that Petitioners thwarted this agreement, to the damage of Southeastern, that Southeastern reached similar agreements with Graver Oil & Gas Equipment Company, Marler Construction Company and Sinclair Oil & Gas Company for the erection of a plant on the Southeastern pipeline, and that Petitioners frustrated these agreements to the damage of Southeastern. The trial court in its charge to the jury excluded any consideration of damages flowing from the failure to construct an extraction plant (R. 3321). The evidence which Respondents introduced would have supported a finding that Southeastern had both the intention and the preparedness to construct an extraction plant and that if the jury so found, Southeastern would be entitled to damages. The Appellate Court properly remanded that portion of the case for trial so Respondents may prove, if they can, before a jury what damages they sustained.

Petitioners protest (page 3 of their Application) that damages for the loss of the extraction plant cannot be recovered because Wolcott did not sign the instrument (Exhibit 85A) is completely void of any merit. First,

because there is not a scintilla of evidence that Respondents had anything to do with such signature and, second, the jury's answer to question 5 establishes by substantial evidence that Petitioners and their co-conspirator F. E. Appling prevented Fred Wolcott from signing Respondents' Exhibit 85A.

The *Magenau v. Aetna Freight Lines, Inc.*, 360 U.S. 273, 279 (1959) is simply not in point. In *Magenau*, the court reversed the case on the liability issue. The question there being whether a stranger, driving along with the truck driver to help him because he had trouble with the truck a number of times, became the servant of the truck driver's employer rather than the owners of the truck and therefore relegated to the benefits of the workmen's compensation laws of the State of Pennsylvania. But not so here. In the case at bar, the issue of liability was passed on by a jury on amply supported evidence. In any event, Petitioners' attack is centered on what Petitioners claim to be an absence of the relevant market, and a lack of power to monopolize, but such issue was resolved against Petitioners.

In these days when courts are clogged with litigation it would be contrary to the bars' and judicial efforts to expedite litigation, to remand for a trial on issues already fully developed and passed upon by a jury on a case that has been pending almost nine years and a trial which took over six weeks.

CONCLUSION

It is clear that the Court of Appeals acted well within the intent of the Congressional enactment of the Antitrust Laws of the United States, and its decision entirely ap-

propriate under the facts. The questions raised by Petitioners do not warrant a review by this court. Indeed, the opinion of the Court of Appeals is grounded on sound legal principles and recognized authority as expressed by the decisions of this court. It is therefore respectfully prayed that Petitioners' application for a writ be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing was served, on the 11th day of June, 1971, on Messrs. Vinson, Elkins, Searls & Smith, First City National Bank Bldg., Houston, Texas 77002, attorneys for Petitioners, by piacing the same in a properly addressed envelope, postage prepaid, and depositing the same in the United States mail.

Arthur J. Mandell

ARTHUR J. MANDELL

APPENDIX A

Art. 6049a.

Additional persons as common purchasers

Sec. 8aa. In addition to persons enumerated in Section 8, hereof, any and all other persons, association of persons, or corporations, operating any pipe line, which may now, or hereafter, purchase crude oil, petroleum, or natural gas in this State, whether they be common carriers or affiliated with common carriers or not, shall be a common purchaser of such crude oil, petroleum or natural gas, and shall purchase crude oil, petroleum or natural gas, offered it for purchase without discrimination in favor of one producer or person as against another as provided in Section 8 hereof.

Anti-trust laws unaffected

Sec. 8bb. It is expressly provided that no provision of this Act shall be construed as in any wise modifying, limiting, changing, repealing, or affecting any part of the present laws of this State defining and regulating trusts, monopolies, and conspiracies in restraint of trade; and that no provision of this Act shall be construed as authorizing any agreement and/or combination of capital, skill, or acts and/or any combination or consolidation now prohibited by the Anti-trust Laws of this State and/or the laws of this State prohibiting trusts, monopolies, and/or conspiracies in restraint of trade; and that no provision of this Act is intended or shall be construed as authorizing any agreement, act, combination, consolidation, or otherwise, which is now prohibited under the Anti-trust Laws of this State and/or the laws prohibiting and defining trusts, monopolies and/or conspiracies in restraint of trade.

APPENDIX B

Art. 6050.

1. Producing or obtaining, transporting, conveying, distributing or delivering natural gas: (a) for public use or service for compensation; (b) for sale to municipalities or persons or companies, in those cases referred to in paragraph 3 hereof, engaged in distributing or selling natural gas to the public; (c) for sale or delivery of natural gas to any person or firm or corporation operating under franchise or a contract with any municipality or other legal subdivision of this State; or, (d) for sale or delivery of natural gas to the public for domestic or other use.

2. Owning or operating or managing a pipe line for the transportation or carriage of natural gas, whether for public hire or not, if any part of the right of way for said line has been acquired, or may hereafter be acquired by the exercise of the right of eminent domain; or if said line or any part thereof is laid upon, over or under any public road or highway of this State, or street or alley of any municipality, or the right of way of any railroad or other public utility; including also any natural gas utility authorized by law to exercise the right of eminent domain.

APPENDIX C

Rule 30. Gas Nominations Required.

(A) Initial Purchasers

All first purchasers of gas produced from wells shall file by the ninth (9th) day of each month nominations (Form GN) of requirements for gas to be used by them from each reservoir during the following month. Purchasers who gather gas from various gas fields and reservoirs or who purchase gas at the wellhead of the wells or purchase gas at a common purchase point must determine if they are the initial purchaser and, if so, shall file gas nominations *(Form GN)*. An operator using gas-well gas for his own operations, either on leases or in a fuel system, shall file gas nominations *(Form GN)*. Operators of processing plants who operate field gathering systems and who are the purchasers of gas at the wellhead shall file gas nominations *(Form GN)*.

(B) Producer's Forecast

The operator of one or more wells in a reservoir for which an allocation formula has been adopted must submit Producer's Forecast *(Form PF)* by the ninth (9th) day of each month for gas to be produced during the following month. A new operator in a reservoir for which a proration schedule has been issued must submit a Producer's Forecast *(Form PF)* by the ninth (9th) day of the month following the month in which his first allowable is assigned. Each operator in a reservoir for which a proration schedule has not been issued must submit a Producer's Forecast *(Form PF)* when directed by the Commission or by the ninth day of the month preceding the month of schedule.

APPENDIX D

Art. 5049e.

Anti-trust laws unaffected

Sec. 19. It is especially provided that nothing herein shall in any manner affect, alter, diminish, change or modify the anti-trust and/or monopoly Statutes of this State, and that no provision of this Act shall in any manner directly or indirectly authorize a violation of such anti-trust and/or monopoly Statutes, and in this connection it is hereby declared and especially provided by the Legislature of the State of Texas enacting this legislation that notwithstanding the provisions of any other sections of this Act, it is the legislative intent that no provision of this Act shall in any manner affect, alter, diminish or amend any provision of the anti-trust and/or monopoly Statutes of this State, or in any manner authorize a violation of such anti-trust and/or monopoly Statutes; and it is further especially provided that if any provision of this Act shall be so construed by any Court of this State as to in any manner affect, alter, diminish, or modify any provision of the anti-trust and/or monopoly Statutes of this State, then in that event any such section, sub-section, sentence, or clause or any provision of this Act so construed as conflicting with said monopoly and/or anti-trust Statutes, is hereby declared null and void rather than the anti-trust and/or monopoly Statutes of this State. The legislative intent herein expressed is to prevail and take precedence over the provisions of any other section or sections of this Act, regardless of any statement therein to the contrary.

APPENDIX E

The Court's instruction to the jury, pages 3299-3301, 3303, 3308 and 3310.

"The purpose of the Sherman Antitrust Act is to preserve and advance our system of free, competitive enterprise; to encourage to the fullest extent practicable free and open competition in the market place, and to prevent the accomplishment of a monopoly in any business or industry; all to the ultimate end that the consuming public might be able to receive better goods and services at lower costs. It was not the intent or purpose of the Act to embrace every conceivable contract or combination which could be made concerning trade or commerce and to thereby make any act done anywhere in the whole field of human activity to be illegal, but it was the purpose to make those acts and contracts and combinations illegal which unduly restrained trade *and to forbid all contracts or acts which had a monopolistic tendency and which unduly interfered with the natural flow of an appreciable amount of interstate commerce.* The courts have always recognized that there are some types of agreements whose validity were the result of surrounding circumstances. In this area the criteria adopted by the Courts in any given case for the purpose of ascertaining if violations have been committed is the rule of reason. Therefore, the Courts are conscious of the fact that the freedom of the individual to contract when not unduly or improperly exercised is the most efficient means for the prevention of a monopoly, because the right to freely contract is the means by which a monopoly would be inevitably prevented. In other words, the freedom to contract was and is the essence of freedom from undue restraint on the right to contract."

> "The amount of quantity or value of the interstate commerce involved or affected by an unreasonable restraint of trade is immaterial. The Sherman Antitrust Act brands as unlawful any contract or combination or conspiracy, which would operate to restrain unreasonably any interstate trade and commerce, regardless of how small in amount or quantity or value."

The court then defined monopoly:

> "The word 'monopolize,' as used in the Sherman Antitrust Act means the power possessed by a combination or conspiracy formed with the intent either to obtain, or to maintain, the power to remove or exclude competitors from the field of competition in a particular business or industry."

And lastly on this question the court stated:

> "You are instructed that when any one has acquired a natural monopoly by means which are neither exclusionary, unfair, or predatory, he is not disempowered to defend his position fairly."